



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-375

Appeal P-920188

Centennial College of Applied Arts and Technology



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Centennial College of Applied Arts and Technology (the College) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to "all materials held in the College respecting comment on my teaching effort and performance relating to the School of Continuing Education courses I taught during the Fall 1991 semester, excluding material related to the regular in-class-administrated course evaluations". Specifically the requester sought access to all communication from students to the School of Continuing Education in the nature of a complaint, in original and noted form, and the names and addresses of the complainant(s).

The College did not respond to the request within the statutory time frame of 30 days, and the requester appealed on the basis that the College was deemed to have refused access to the requested records, as provided in section 29(4) of the Act.

During mediation the College identified and disclosed to the appellant a memo dated December 23, 1991. The College also identified a memo dated September 23, 1991, with the intention of disclosing it to the appellant; however, the appellant confirmed that he already had a copy of the memo.

In addition, the College identified an undated two-page handwritten letter received by the College from an individual (the affected person). During mediation, the affected person consented to the release of a typewritten version of the letter "with all identifying factors relating to the author blacked out". The College then released to the appellant a typewritten transcript of the letter, with severances relating to the identity of the affected person.

The College indicated that it had no records in its custody or control that would be responsive to the request, other than the three identified above.

The College issued a formal decision letter to the appellant denying access to the identity of the affected person, pursuant to sections 49(b) and 21 of the Act.

The appellant wished access to the identity of the affected person. He also maintained that there were other records responsive to his request which the College has failed to identify.

A complete settlement of the appeal was not successful. Therefore, a Notice of Inquiry was sent to the College, the appellant and the affected person, requesting representations. Representations were received from the College and the appellant.

The record at issue in this appeal is the two-page handwritten letter signed by the affected person and bearing his/her name and address. This letter may generally be described as a letter of complaint by a student regarding the teaching methods and habits of the appellant.

ISSUES:

The issues in this appeal are as follows:

- A. Whether the College's search for the requested records was reasonable in the circumstances.
- B. Whether the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the discretionary exemption provided by section 49(b) of the Act applies to any parts of the record.
- D. If the answer to Issue B is yes, whether the mandatory exemption provided by section 21 of the Act applies to any parts of the record.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the College's search for the requested records was reasonable in the circumstances.

In his representations, the appellant states that the College has not conducted a reasonable search for records that are related to complaints other than from the affected person. He feels that the College has received other verbal complaints and should have a record of the nature of the complaints and the identity of the complainants.

In the College's representations, the Executive Director, Human Resources, who is also the College's Freedom of Information and Privacy Co-ordinator, has outlined the steps taken to locate any responsive records in the College's custody or control as follows:

Regarding searches for the documents, two locations were searched. Firstly, we checked the appellant's central personnel file in the Human Resources area at the Ashtonbee campus. There was no information relating to any recent teaching in Continuing Education in that file, much less any comments on the teaching. The next step was to write to the Associate Dean of Part-time Studies for the School of Continuing Studies to ask that he investigate his files which are located at the

Warden Woods Campus. [The Associate Dean] did so and within a day or two delivered to me a brown manila envelope containing 3 documents (the memos dated September 23, 1991; December 23, 1991; and the handwritten letter from the affected person).

The Executive Director also states that she spoke to various employees of the College and personally conducted additional searches for the records at the locations indicated above. She indicates that there were no additional records found.

I have received affidavits from the College's Executive Director, Human Resources; the Associate Dean, Part-time Studies; and a clerk at the Warden Woods campus where the School of Continuing Studies is located. These affidavits describe in detail the steps taken to locate records responsive to the request and confirm that no additional records were found.

I have carefully reviewed the College's representations and accompanying affidavits. In my view, thorough searches were conducted during the course of processing the appellant's request and appeal and I am satisfied that the College's search for responsive records was reasonable in the circumstances.

ISSUE B: Whether the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.

In all cases where the request involves access to personal information, it is my responsibility, before deciding whether the exemptions claimed by the College apply, to determine whether the information falls within the definition of "personal information" as set out in section 2(1) of the Act, and whether it relates to the appellant, another individual or both.

Section 2(1) of the Act reads, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,

...

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In my view, all of the information contained in the record falls within one or more of the aforementioned paragraphs of the definition of personal information under section 2(1) of the Act, and relates to both the appellant and the affected person. Specifically, in the circumstances of this appeal, I find that the identity of the affected person is personal information that relates to both the appellant and the affected person.

ISSUE C: If the answer to Issue B is yes, whether the discretionary exemption provided by section 49(b) of the Act applies to any parts of the record.

I have found under Issue B that the record contains the personal information of both the appellant and the affected person.

Section 47(1) of the Act gives individuals a general right of access to personal information in the custody or control of institutions. However, this right of access is not absolute. Section 49(b) provides an exception to this general right of disclosure of personal information to the person to whom the information relates. Specifically, section 49(b) provides that:

A head may refuse to disclose to the individual to whom the information relates personal information,
where the disclosure would constitute an unjustified invasion of
another individual's personal privacy;

Section 49(b) introduces a balancing principle. The College must look at the information and weigh the requester's right of access to his/her own personal information against other individuals' right to the protection of his/her personal privacy. If the College determines that the release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the College the discretion to deny the requester access to the personal information [Order 37].

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In its representations, the College has specifically claimed section 21(3)(d) of the Act, which provides:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

relates to employment or educational history;

The College states that the record contains the educational history of the affected person. I have carefully reviewed the record, and in my view, it does not contain any information that relates to the educational history of the affected person. Accordingly, I find that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(d) have not been satisfied.

Section 21(2) provides some criteria for the College to consider in determining whether a disclosure of personal information would constitute an unjustified invasion of personal privacy. The College relies on sections 21(2)(d), (e) and (h) to support its decision to deny access. The appellant, on the other hand, raises the type of considerations found in section 21(2)(d) in support of his position that the information should be released. These sections read as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Considering section 21(2)(e) first, the College has provided no evidence regarding the relevance of the section, and in my review there is nothing to indicate that it is, in the circumstances of this appeal.

Turning to section 21(2)(d), the appellant states in his representations:

The complainant(s) have no legitimate fear, upon being identified, other than that of facing litigation. I submit that this cannot be seen as "unfair exposure". On my side, I have suffered significant financial and professional reputation loss as a result of the complainant(s) actions and I feel I must have the opportunity of seeking legitimate legal redress. On balance, I submit that my need for the full record outweighs any other's interests.

In order for section 21(2)(d) of the Act to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[Order P-312]

Apart from the general statement that he has suffered loss of financial and professional reputation, and must have the opportunity of seeking legal redress, the appellant has not provided sufficient evidence to support a finding that the requirements of section 21(2)(d) have been met. Based on my review of the record, the representations of the parties and the evidence provided, I am unable to find that it is a relevant consideration in this appeal.

I have also considered whether any factors under section 21(2) or any other provisions of the Act might apply in favour of disclosure of the information, and in my view, none apply in the circumstances of this appeal.

Regarding section 21(2)(h), the College states in its representations, that the information at issue "was provided confidentially **only after the College agreed and promised to maintain that confidentiality.**" This is confirmed by an affidavit submitted by the Associate Dean for the College's School of Continuing Studies who received the letter of complaint.

Examination of the exchange of correspondence between the appellant and the College following the receipt of the record by the College indicates that the College had written the appellant advising that "if the writer of the letter does not consent to its release to you, the College will in no way recognize it and take no action. No copies will be retained and no information related to it will be retained in your file."

The College then wrote to the affected person seeking consent to the release of the letter to the appellant. The College advised the affected person: "should you not consent to the release of your letter, I must inform you that the College is unable to recognize your complaint and all record of it will be removed from our file." The affected person withheld consent to the

disclosure of his/her identity, and the College took no further action with respect to processing the complaint.

In my view, the College has provided sufficient evidence to establish the relevance of section 21(2)(h) in the circumstances of this appeal. Accordingly, I find that the identity of the affected person was supplied to the College in confidence.

The factor under section 21(2)(h) favours the non-disclosure of the information. I have found no factors that would favour disclosure. Therefore, in weighing the appellant's right to access the information against the affected person's right to the protection of his/her privacy, I am of the opinion, in the circumstances of this case, that disclosure of the identity of the affected person would be an unjustified invasion of the his/her privacy. I find that the exemption under section 49(b) of the Act applies.

Section 49(b) is a discretionary exemption. The College has provided representations regarding the exercise of discretion to refuse to disclose the identity of affected person, and I find nothing to indicate that the exercise of discretion was improper in the circumstances.

Because of the manner in which I have disposed of Issues B and C, it is not necessary for me to deal with Issue D.

ORDER:

I uphold the College's decision.

Original signed by: _____
Asfaw Seife
Inquiry Officer

December 4, 1992